

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of JOHN W. GUNTHER and U.S. POSTAL SERVICE,  
POST OFFICE, Bremerton, Wash.

*Docket No. 97-2103; Submitted on the Record;  
Issued June 2, 1999*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellants' compensation benefits on the grounds that he refused suitable work.

On May 14, 1982 appellant, then a 52-year-old letter carrier, sustained a contusion of the left knee, a medial meniscal tear and degenerative joint disease in the performance of duty when he fell on his left knee. He returned to work for four hours a day on March 22, 1984 performing clerical work. Effective July 31, 1984 appellant elected to retire from the employing establishment at the age of 55.<sup>1</sup>

In a work restriction evaluation form dated March 5, 1984, Dr. Richard F. Ambur, a Board-certified orthopedic surgeon, provided a list of work restrictions for appellant and indicated that he could work for four hours per day progressing to eight hours after three months.

In 1995 appellant elected to receive compensation benefits under the Federal Employees' Compensation Act in lieu of benefits provided by the Office of Personnel Management. The Office placed appellant on the periodic compensation rolls to receive compensation benefits for temporary total disability.

By letter dated January 22, 1996, the employing establishment noted that the Office had inquired about a job description for appellant's position in 1984 before his optional retirement and stated that appellant's file could not be found as he had been retired for more than 11 years. However, the employing establishment stated that appellant was working in a suitable limited-duty work assignment from March 22, 1984 through his retirement on August 1, 1984 and this was documented by a medical report dated February 7, 1986 which stated: "[Appellant] had

---

<sup>1</sup> An employing establishment form dated July 13, 1984 notes that appellant elected to take optional retirement as of July 31, 1984.

been transferred to essentially clerical work which he performed until a year ago when he retired.”

By letter dated February 25, 1986, appellant stated, as to the reason he had retired on July 31, 1984, “On July 24, 1984 I reached age 55 and elected to retire.”

By letter dated March 7, 1986, appellant noted that a Dr. Philips had released him to work with some restrictions and he was driving a bus five days a week for four to five hours a day for Kitsap Transit. Appellant stated, “After 36 years at [the employing establishment] I reached the age of 55 and retired on July 31, 1984. Was there something [wrong] in doing this? Was it wrong? My statement is that I went out on OPM [Office of Personnel Management] retirement as it is allowed.”

By letter dated May 9, 1996, the Office advised appellant that it proposed to terminate his compensation benefits on the grounds that he left suitable employment and elected to voluntarily retire on July 31, 1984. The Office stated that the position which appellant was performing for the employing establishment at the time of his retirement on July 31, 1984 was deemed suitable as documented by a medical report dated February 7, 1986 which stated: “[Appellant] had been transferred to essentially clerical work which he performed until a year ago when he retired.” The Office noted that, “Had [appellant] not offered to retire voluntarily he would have been entitled to receive compensation benefits for the remaining four hours of work each day.”

In an undated letter received by the Office on June 26, 1996, appellant argued that the position he was offered was not suitable because he was experiencing chronic pain. He asserted that he had never voluntarily left the employing establishment and that it was the pain from his employment injury which caused him to retire. Appellant stated that from March 22 through July 31, 1984 he did not perform any clerical work and only sat in a chair reading books and magazines. He stated that after he left the employing establishment he worked as a van driver for Kitsap Transit because his wife had been diagnosed with a terminal disease and he needed to work because his health benefits did not cover catastrophic medical care.

By decision dated July 27, 1996, the Office terminated appellant’s compensation benefits effective July 20, 1996 on the grounds that appellant left suitable employment.

The Board finds that the Office properly terminated appellant’s compensation effective July 20, 1996 on the grounds that he left suitable work.

Section 8106(c)(2) of the Federal Employees’ Compensation Act provides in pertinent part, “A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered ... is not entitled to compensation.”<sup>2</sup> However, to justify such termination, the Office must show that the work offered was suitable.<sup>3</sup> An employee who refuses or neglects to work

---

<sup>2</sup> 5 U.S.C. § 8106(c)(2).

<sup>3</sup> *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

after suitable work has been offered to him has the burden of showing that such refusal to work was justified.<sup>4</sup>

The evidence of record shows that appellant is capable of performing the clerical work he was offered by the employing establishment as he was performing this work from March 22, 1984 until his voluntary retirement<sup>5</sup> on July 31, 1994. Although appellant alleges that he retired for medical reasons, he did not submit medical evidence to support his contention. The record shows that appellant's attending Board-certified orthopedic surgeon, Dr. Ambur, released appellant to return to work with some restrictions for four hours a day, progressing to eight hours after three months and that appellant did perform the clerical position offered to him by the employing establishment from April 1984 until his voluntary retirement in July 1984. The employing establishment stated that had appellant continued to perform the clerical position for four hours a day, he would have received compensation for the remaining four hours. The record also shows that appellant was driving a bus in 1986 for a private employer which does not support his argument that he was disabled for the clerical position he held in 1984. There is no evidence of record which indicates that appellant retired because of disability or health reasons.

Upon consideration of all the evidence in the case record, the Board finds that the Office properly terminated appellant's compensation benefits for failure to work after suitable work was secured for him.

The July 27, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
June 2, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

---

<sup>4</sup> 20 C.F.R. § 10.124; *see Catherine G. Hammond*, 41 ECAB 375, 385 (1990).

<sup>5</sup> Retirement is not an acceptable reason for refusing or abandoning suitable employment; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5, 10d (July 1996); *Roy Bankston*, 38 ECAB 380 (1987).